



FACT SHEET

THE FARMLAND PROTECTION TOOLBOX



TECHNICAL ASSISTANCE
One Short Street, Suite 2
Northampton, MA 01060
Tel: (413) 586-4593
Fax: (413) 586-9332
Web: www.farmlandinfo.org

NATIONAL OFFICE
1200 18th Street, NW, Suite 800
Washington, DC 20036
Tel: (202) 331-7300
Fax: (202) 659-8339
Web: www.farmland.org

October 2002

DESCRIPTION

This fact sheet provides a brief description of the tools and techniques that state and local governments are using to protect farmland and ensure the economic viability of agriculture. Some of the techniques result in programs that are enacted and administered at the state level, others are used primarily by local governments. Sometimes, municipal governments adapt and strengthen state laws to meet unique local needs. Many of the most effective farmland protection programs combine regulatory and incentive-based strategies.

PROGRAMS THAT ARE GENERALLY ENACTED AT THE STATE LEVEL

Agricultural District Programs

Agricultural district programs allow farmers to form special areas where commercial agriculture is encouraged and protected. They stabilize the land base and support the business of farming by providing farmers with an attractive package of incentives. Typically, programs are authorized by state law and implemented at the local level. An exception is Calvert County, Md., which has its own independent agricultural district program.

There are a total of 18 state agricultural district laws in 16 states. Minnesota and Virginia authorize statewide and local agricultural district programs. Provisions vary widely, but most agricultural district laws are intended to be comprehensive responses to the challenges facing farmers in developing communities.

To maintain a land base for agriculture, some agricultural district laws protect farmland from annexation and eminent domain. Many laws also require that state agencies limit construction of infrastructure, such as roads and sewers, in agricultural districts. Three states offer participants eligibility for purchase of agricultural conservation easement programs, and two states include a right of first refusal in district agreements to ensure that land will continue to be available for agriculture.

Agricultural district laws help create a more secure climate for agriculture by preventing local governments from passing laws that restrict farm practices, and by providing enhanced protection from private nuisance lawsuits.

To reduce farm operating expenses, seven programs offer either automatic eligibility for differential tax assessment or property tax credits to farmers who enroll in agricultural districts.

Some states encourage local planning by limiting district authorization to jurisdictions with comprehensive or farmland protection plans; requiring the adoption of land use regulations to protect farmland; involving planning bodies in the development and approval of districts; and limiting non-farm development in and around agricultural districts.

Conservation Easements

Every state in the nation has a law pertaining to conservation easements. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The Act was designed to serve as a model for state legislation to allow qualified public agencies and private conservation organizations to accept, acquire and hold less-than-fee-simple interests in land for the purposes of conservation and preservation. Since the Uniform Act was approved, 21 states have adopted conservation easement-enabling legislation based on this model and 23 states have drafted and enacted their own conservation easement-enabling laws. In Pennsylvania, conservation easements are authorized by common law. Oklahoma and Wyoming do not have separate provisions of state law authorizing the conveyance of conservation easements, but state agencies are given the power to hold title to easements in their authorizing legislation.[#]

[#] Stefan Nagel, State Conservation Easement Legislation (Washington, D.C.: National Trust for Historic Preservation, 1995).

THE FARMLAND PROTECTION TOOLBOX

Agricultural conservation easements are designed specifically to protect farmland. Grantors retain the right to use their land for farming, ranching and other purposes that do not interfere with or reduce agricultural viability. They continue to hold title to their properties and may restrict public access, sell, give or transfer their property as they desire. Producers also remain eligible for any state or federal farm program for which they qualified before entering into the conservation agreement.

Conservation easements limit land to specific uses and thus protect it from development. These voluntary legal agreements are created between private landowners (grantors) and qualified land trusts, conservation organizations or government agencies (grantees). Grantors can receive federal tax benefits as a result of donating easements. Grantees are responsible for monitoring the land and enforcing the terms of the easements.

Easements may apply to entire parcels of land or to specific parts of a property. Most easements are permanent; term easements impose restrictions for a limited number of years. All conservation easements legally bind future landowners. Land protected by conservation easements remains on the tax rolls and is privately owned and managed. While conservation easements limit development, they do not affect other private property rights.

Agricultural conservation easements are a flexible farmland protection tool. Private land trusts and other conservation organizations educate farmers about the tax benefits of donating easements, and state and local governments have developed programs to purchase agricultural conservation easements from landowners. In addition, agricultural conservation easements can be designed to protect other natural resources, such as wetlands and wildlife habitat.

Executive Orders

Governors of at least 10 states have issued executive orders that document the importance of

agriculture and farmland to their states' economy, environment and culture. Some executive orders direct state agencies to withhold funding from projects that would result in farmland conversion. Others have created task forces to investigate farmland conversion. State executive orders have the potential to build public and institutional support for other farmland protection programs. By restricting the use of state funds for projects that would result in the loss of agricultural land, executive orders also can influence the actions of local governments. To the extent that they call attention to the problem of farmland conversion and facilitate discussion about solutions, executive orders can serve as a building block of a comprehensive farmland protection program.

Growth Management Laws

Growth management laws are designed to control the timing and phasing of urban growth and to determine the types of land use that will be permitted at the local and regional levels. At least 12 states have laws that control development or set planning standards for local governments, but only seven - Hawaii, Maryland, Minnesota, New Jersey, Oregon, Vermont and Washington - address the issue of farmland conversion. These seven laws vary in the controls that they impose on state and local governments and in the extent to which they protect agricultural land from development.

Growth management laws take a comprehensive approach to regulating the pattern and rate of development and set policies to ensure that most new construction is concentrated within designated urban growth areas or boundaries (UGBs). They direct local governments to identify lands with high resource value and protect them from development. Some growth management laws require that public services such as water and sewer lines, roads and schools be in place before new development is approved. Others direct local governments to make decisions in accordance with comprehensive plans that are consistent with plans for adjoining areas.

Oregon has one of the nation's strongest growth management laws. As a result of the state's 1972 Land Conservation and Development Act, every county in Oregon has implemented agricultural protection zoning, protecting more than 16 million acres of agricultural land. Washington's Growth Management Act (GMA), passed in 1990 and strengthened in 1991, also is proving to be an effective farmland protection tool. Most of Washington's counties have developed inventories of important agricultural land, and several have implemented farmland protection techniques, such as agricultural protection zoning, purchase of agricultural conservation easement programs and transfer of development rights programs since the enactment of the GMA. Growth management laws in Hawaii, Vermont, New Jersey and Maryland have been somewhat less effective in preventing farmland conversion and promoting the development of local farmland protection programs.

Purchase of Agricultural Conservation Easement Programs

Purchase of agricultural conservation easement (PACE) programs pay property owners to protect their land from development. PACE is known by a variety of other terms, the most common being purchase of development rights. Landowners sell agricultural conservation easements to a government agency or private conservation organization. The agency or organization usually pays them the difference between the value of the land for agriculture and the value of the land for its "highest and best use," which is generally residential or commercial development. Easement value is most often determined by professional appraisals, but may also be established through the use of a numerical scoring system that evaluates the suitability for agriculture of a piece of property.

State and local governments can play a variety of roles in the creation and implementation of PACE programs. Some states have passed legislation that allows local governments to create

PACE programs. Others have enacted PACE programs that are implemented, funded and administered by state agencies. Several states work cooperatively with local governments to purchase easements. A few states have appropriated money for use by local governments and private nonprofit organizations. Finally, some local governments have created independent PACE programs in the absence of any state action.

Cooperative state-local PACE programs have some advantages over independent state or local programs. Cooperative programs allow states to set broad policies and criteria for protecting agricultural land, while county or township governments select the farms that they believe are most critical to the viability of local agricultural economies, and monitor the land once the easements are in place. Involving two levels of government generally increases the funding available for PACE. Finally, cooperative programs increase local government investment in farmland protection.

PACE programs allow farmers to cash in a fair percentage of the equity in their land, thus creating a financially competitive alternative to selling land for non-agricultural uses. Permanent easements prevent development that would effectively foreclose the possibility of farming. Removing the development potential from farmland generally reduces its future market value. This may help facilitate farm transfer to the children of farmers and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes. PACE provides landowners with liquid capital that can enhance the economic viability of individual farming operations and help perpetuate family tenure on the land. Finally, PACE gives communities a way to share the costs of protecting agricultural land with farmers.

Right-to-Farm Laws

State right-to-farm laws are intended to protect farmers and ranchers from nuisance lawsuits. Every state in the nation has at least one

THE FARMLAND PROTECTION TOOLBOX

right-to-farm law. Some statutes protect farms and ranches from lawsuits filed by neighbors who moved in after the agricultural operation was established. Others protect farmers who use generally accepted agricultural and management practices and comply with federal and state laws. Twenty-three right-to-farm laws also prohibit local governments from enacting ordinances that would impose unreasonable restrictions on agriculture.

Right-to-farm laws are a state policy assertion that commercial agriculture is an important activity. The statutes also help support the economic viability of farming by discouraging neighbors from filing lawsuits against agricultural operations. Beyond these protections, it is unclear whether right-to-farm laws help maintain the land base.

Tax Relief

Circuit Breaker Tax Relief Credits

Circuit breaker tax programs offer tax credits to offset farmers' property tax bills. Four states have circuit breaker programs. In Michigan, Wisconsin and New York, farmers may receive state income tax credits based on the amount of their real property tax bill and their income.

In Iowa, farmers receive school tax credits from their local governments when school taxes exceed a statutory limit. The counties and municipalities are then reimbursed from a state fund. In Michigan, landowners that wish to receive circuit breaker credits must sign 10-year restrictive agreements with their local governments to prevent farmland conversion. In Wisconsin, counties and towns must adopt plans and enact agricultural protection zoning to ensure that tax credits are targeted to productive agricultural land. The Wisconsin program has facilitated the adoption of agricultural protection zoning in more than 400 local jurisdictions.

Like differential assessment laws, circuit breaker tax relief credits reduce the amount farmers are

required to pay in taxes. The key differences between the programs are that most circuit breaker programs are based on farmer income and are funded by state governments.

Differential Assessment Laws

Differential assessment laws direct local governments to assess agricultural land at its value for agriculture, instead of its full fair market value, which is generally higher. Differential assessment laws are enacted by states and implemented at the local level. With a few exceptions, the cost of the programs is borne at the local level.

Every state except Michigan has a differential assessment law. Differential assessment is also known as current use assessment, current use valuation, farm use valuation, use assessment and use value assessment.

Differential assessment programs help ensure the economic viability of agriculture. Since high taxes reduce profits, and lack of profitability is a major motivation for farmers to sell land for development, differential assessment laws also protect the land base. Finally, these laws help correct inequities in the property tax system. Owners of farmland demand fewer local public services than residential landowners, but they pay a disproportionately high share of local property taxes. Differential assessment helps bring farmers' property taxes in line with what it actually costs local governments to provide services to the land.

PROGRAMS THAT ARE ENACTED AT THE LOCAL LEVEL

Agricultural Protection Zoning

Zoning is a form of local government land use control. Zoning ordinances segment counties, cities, townships and towns into areas devoted to specific land uses and establish standards and densities for development.

Agricultural protection zoning (APZ) ordinances designate areas where farming is the

primary land use and discourage other land uses in those areas. APZ limits the activities that are permitted in agricultural zones. The most restrictive regulations prohibit any uses that might be incompatible with commercial farming.

APZ ordinances also restrict the density of residential development in agricultural zones. Maximum densities range from one house per 20 acres in the eastern United States to one house per 640 acres in the West. Some local ordinances also contain right-to-farm provisions and authorize commercial agricultural activities, such as farmstands, that enhance farm profitability. Occasionally, farmers in an agricultural zone are required to prepare farm management plans.

In most states, APZ is implemented at the county level, although towns and townships may also have APZ ordinances. Zoning can be modified through the local political process. Generally, the enactment of an APZ ordinance results in a reduction of permitted residential densities in the new zone. This reduction in density, also called downzoning, is generally controversial because it can reduce the market value of land. A change in zoning that increases permitted residential densities is known as upzoning. A change in the zoning designation of an area—from agricultural to commercial, for example—is known as rezoning. Successful petitions for upzoning and rezoning in agricultural protection zones often result in farmland conversion.

APZ stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development. This can reduce the likelihood of conflicts between farmers and their non-farming neighbors. Communities can use APZ to conserve a “critical mass” of agricultural land, enough to keep individual farms from becoming isolated islands in a sea of residential neighborhoods. Maintaining a critical mass of agricultural land can ensure that there will be enough farms to support local

agricultural service businesses. By restricting the development potential of large properties, APZ limits land speculation and helps keep land affordable to farmers and ranchers. Finally, APZ helps promote orderly growth by preventing sprawl into rural areas, and benefits farmers and non-farmers alike by protecting scenic landscapes and maintaining open space.

Cluster Zoning

Cluster zoning ordinances allow or require houses to be grouped close together on small lots to protect open land. The portion of the parcel that is not developed may be restricted by a conservation easement. Cluster developments are also known as cluster subdivisions, open space or open land subdivisions.

Cluster subdivisions can keep land available for agricultural use, but generally they are not designed to support commercial agriculture. The protected land is typically owned by developers or homeowners’ associations. Homeowners may object to renting their property to farmers and ranchers because of the noise, dust and odors associated with commercial agricultural production. Even if the owners are willing to let the land be used for agriculture, undeveloped portions of cluster subdivisions may not be large enough for farmers to operate efficiently, and access can also be a problem. For these reasons, cluster zoning has been used more successfully to preserve open space or to create transitional areas between farms and residential areas than to protect farmland.

Comprehensive Planning

Comprehensive planning allows counties, cities, towns and townships to create a vision for their joint future. Comprehensive plans, which are also known as master or general plans, outline local government policies, objectives and decision guidelines, and serve as blueprints for development. They typically identify areas targeted for a variety of different land uses, including agriculture, forestry, residential, commercial, industrial

THE FARMLAND PROTECTION TOOLBOX

For additional information on farmland protection, the Farmland Information Center offers publications, an on-line library and technical assistance. To order AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at www.farmlandinfo.org. For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.

and recreational activities. Comprehensive plans provide a rationale for zoning and promote the orderly development of public services.

A comprehensive plan can form the foundation of a local farmland protection strategy by identifying areas to be protected for agricultural use and areas where growth will be encouraged. It may include policies designed to conserve natural resources and provide affordable housing and adequate public services. Some counties have used the comprehensive planning process to encourage their cities and towns to develop urban growth boundaries and adopt agricultural protection zoning. Others have incorporated the use of PACE and transfer of development rights into their master plans.

Mitigation Ordinances and Policies

Mitigation ordinances are a new farmland protection technique. In 1995, city officials in Davis, Calif., enacted an ordinance that requires developers to permanently protect one acre of farmland for every acre of agricultural land they convert to other uses. Developers can place an agricultural conservation easement on farmland in another part of the city or pay a fee to satisfy mitigation. While most of the regulatory farmland protection techniques restrict the property rights of farmers, the Davis mitigation ordinance makes developers pay for farmland protection.

In 2000, Yolo County, Calif., where the City of Davis is located, adopted an agricultural land mitigation program that is modeled on the 1995 City of Davis ordinance.

In Massachusetts, Executive Order 193 seeks to lessen the extent to which state activities contribute to the conversion of agricultural land. The Massachusetts Department of Food and Agriculture, based on its interpretation of EO 193, seeks mitigation for projects involving state funds. It has negotiated the removal of top soil from development sites for use by local farmers and funds for agricultural land protection.

King County, Wash. has a “no net loss of farmland” policy in its comprehensive plan. The policy prohibits removal of land from the agricultural production district (APD) unless an equal amount of agricultural land of the same or better quality, adjacent to the APD, is added.

Right-To-Farm Ordinances

Local governments around the nation are enacting their own right-to-farm laws to strengthen and clarify weak language in state laws. Local right-to-farm laws are most widespread in California, where the state farm bureau developed and distributed a model right-to-farm ordinance during the 1980s.

A local right-to-farm ordinance can serve as a formal policy statement that agriculture is a valuable part of the county or town economy and culture. Some require that a notice be placed on the deed to all properties in agricultural areas, cautioning potential buyers that they may experience noise, dust, odors and other inconveniences due to farming and ranching operations. Local ordinances help educate residents about the needs of commercial agriculture and reassure farmers that their communities support them.

Transfer of Development Rights

Transfer of development rights (TDR) programs allow landowners to transfer the right to develop one parcel of land to a different parcel of land. Generally, TDR programs are established by local zoning ordinances. In the context of farmland protection, TDR is used to shift development from agricultural areas to designated growth zones closer to municipal services. The parcel of land where the rights originate is called the “sending” parcel. When the rights are transferred from a sending parcel, the land is restricted with a permanent conservation easement. The parcel of land to which the rights are transferred is called the “receiving” parcel. Buying these rights generally allows the owner

to build at a higher density than ordinarily permitted by the base zoning. TDR is known as transfer of development credits (TDC) in California and in some regions of New Jersey.

TDR is used by counties, cities, towns and townships. Two regional TDR programs for farmland protection were developed to protect New Jersey's Pinelands and the pine barrens of Long Island, N.Y. TDR programs are distinct from PACE programs because they involve the private market. Most TDR transactions are between private landowners and developers. Local governments approve transactions and monitor easements. A few jurisdictions have created "TDR banks" that buy development rights with public funds and sell them to developers and other private landowners.

Some states, such as New Jersey, have enacted special legislation authorizing local governments to create TDR programs. Other states have consistently refused to give local governments such authorization. Counties and towns have created TDR programs without specific state authorizing legislation; municipal governments must work with their attorneys to determine whether other provisions of state law allow them to use TDR.

TDR programs can be designed to accomplish multiple goals including farmland protection, conservation of environmentally sensitive areas and the preservation of historic landmarks. They prevent non-agricultural development of farmland, reduce the market value of protected farms and provide farmland owners with liquid capital that can be used to enhance farm viability.

TDR programs also offer a potential solution to the political and legal problems that many communities face when they try to restrict development of farmland. Landowners often oppose agricultural protection zoning (APZ) and other land use regulations because they can reduce equity. APZ can benefit farmers by preventing urbanization, but it may also reduce the fair

market value of their land. When downzoning is combined with a TDR program, however, landowners can retain their equity by selling development rights.

While dozens of local jurisdictions around the country allow the use of TDR, only a few of them have used the technique successfully to protect farmland. TDR programs are complex and must be carefully designed to achieve their goal. Communities that have been most successful in using TDR are characterized by steady growth, with the political will to maintain and implement strong zoning ordinances and planning departments that have the time, knowledge and resources to administer complex land use regulations.

OTHER STRATEGIES TO PROTECT FARMLAND AND SUPPORT AGRICULTURE

Most farmers say the best way to protect farmland is to keep farming profitable. State and local governments have created a variety of initiatives to support the economics of agriculture.

For example, the Massachusetts Farm Viability Enhancement program was created in 1994 to improve farm income and environmental stewardship. The program has two phases. In Phase I, participating farmers work with a team of consultants to evaluate the current operation and develop a plan. Plans may call for product diversification, direct marketing, value-added products and/or agri-tourism. They also may recommend conservation practices. In Phase II, funding is available to implement the plan. Farmers may apply for grants of \$20,000 or \$40,000 in exchange for five or ten year term easements.

The Massachusetts program has served as a model for initiatives in Connecticut, New Jersey and New York.

FARMLAND PROTECTION ACTIVITIES BY STATE

State	Agricultural Districts	Agricultural Protection Zoning	Circuit Breaker	Differential Assessment	PACE	Right-to-Farm*	TDR
Alabama				▲		▲	
Alaska				▲		▲	
Arizona				▲	▲	▲	
Arkansas				▲		▲	
California	▲	❖		▲	▲❖	▲	❖
Colorado		❖		▲	▲❖	▲	❖
Connecticut				▲	▲	▲	❖
Delaware	▲			▲	▲	▲	
Florida		❖		▲	▲	▲	❖
Georgia				▲		▲	
Hawaii		▲		▲		▲	
Idaho		❖		▲		▲	❖
Illinois	▲	❖		▲	❖	▲	
Indiana		❖		▲		▲	
Iowa	▲	❖	▲	▲		▲	
Kansas		❖		▲		▲	
Kentucky	▲	❖		▲	▲❖	▲	
Louisiana				▲		▲	
Maine				▲	▲	▲	❖
Maryland	▲❖	❖		▲	▲❖	▲	❖
Massachusetts	▲			▲	▲	▲	❖
Michigan		❖	▲		▲❖	▲	
Minnesota	▲❖	❖		▲		▲	❖
Mississippi				▲		▲	
Missouri				▲		▲	
Montana		❖		▲	▲❖	▲	❖
Nebraska		❖		▲		▲	
Nevada				▲		▲	
New Hampshire				▲	▲❖	▲	
New Jersey	▲			▲	▲❖	▲	❖
New Mexico				▲		▲	
New York	▲		▲	▲	▲❖	▲	❖
North Carolina	▲			▲	▲❖	▲	
North Dakota		❖		▲		▲	
Ohio	▲	❖		▲	▲	▲	
Oklahoma				▲		▲	
Oregon		❖		▲		▲	
Pennsylvania	▲	❖		▲	▲❖	▲	❖
Rhode Island				▲	▲	▲	
South Carolina				▲		▲	
South Dakota		❖		▲		▲	
Tennessee	▲			▲		▲	
Texas				▲		▲	
Utah	▲	❖		▲	▲	▲	❖
Vermont				▲	▲	▲	❖
Virginia	▲❖	❖		▲	▲❖	▲	❖
Washington		❖		▲	▲❖	▲	❖
West Virginia				▲	▲	▲	
Wisconsin		❖	▲	▲	❖	▲	
Wyoming		❖		▲		▲	
TOTAL	16	25	4	49	26	50	17

▲ State program

❖ Local program

*A number of local jurisdictions also have enacted right-to-farm ordinances. We do not have a complete inventory.